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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Quia Corporation, Plaintiff/Counter-Defendant, vs. Mattel, Inc. and Fisher-Price, Inc. Defendants/Counterclaimants.	Case No. CV10-1902 JF (HRL) **NOTICE OF COMPLIANCE AND REQUEST FOR APPROVAL REGARDING DISCLAIMER FOR ONLINE ADVERTISING**

Fisher-Price, Inc. and Mattel, Inc. ("Defendants") are making their best efforts to comply with Court's directive that Defendants incorporate a disclaimer into their online advertisements for the iXL toy product. The Court's June 15th Order outlined the following disclaimer:

> Fisher-Price's iXL Learning System and related software bear no relationship to IXL, "The Web's #1 Math Practice Site," owned and operated by Quia Corporation and accessible at http://www.ixl.com.

Defendants are very hesitant to proclaim that Quia's IXL website is "The Web's #1 Math Practice Site," as there appears to be no substantiation for that claim. In fact, Quia's president Mr. Mishkin admitted in his deposition that the alleged "#1" ranking was not based on any study, analysis, or independent ranking, but based on Mr. Mishkin's opinion alone:

> **Q**: … So, my question is: Is the "No. 1 math practice site," this is according to Mishkin?
> **A:** Yeah, it's according --
> **Q:** Okay.
> **A:** It's according to me.
> **Q:** Okay.
> **A:** There's no third party --
> **Q:** Okay.
> **A:** -- who gave us that distinction.

Mishkin Depo. 49:6-52:15 (pages attached as Exhibit A hereto).

Defendants are concerned about creating the perception that they endorse Quia's claim or that Defendants' are complicit in perpetuating it. Additionally, Defendants note that the "Web's No. 1 Math Practice Site" language did not appear in any disclaimer suggested by Quia. *See* Docket No. 60 at pg. 2.

Accordingly, Defendants have made a slight revision to the disclaimer that removes the above-language but describes IXL as an "Online Math Practice Site," which Defendants would ask the Court to approve:

> Fisher-Price's iXL Learning System and related software bear no relationship to the IXL Online "Math Practice Site," owned and operated by Quia Corporation and accessible at www.ixl.com.

To ensure that a disclaimer is posted in a timely fashion, Defendants are incorporating one with the above-language, but should the Court decide that it wants the verbatim language in its June 15th Order, Defendants are prepared to immediately change the disclaimer.

Dated: June 28, 2010

Respectfully submitted,

HOWREY LLP

By: /s/ Bobby A. Ghajar
Bobby A. Ghajar
Robert N. Phillips
Peter Moll

Attorneys for Defendants/Counterclaimants
Mattel, Inc. and Fisher-Price, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QUIA CORPORATION, a Delaware corporation,	)
Plaintiff,	)
vs.	) Case No. CV-10-1902-JF
MATTEL, INC., a Delaware corporation; FISHER-PRICE, INC., a Delaware corporation,	)
Defendants.	)

ORIGINAL

VIDEOTAPED DEPOSITION OF PAUL MISHKIN
San Francisco, California
Wednesday, June 9, 2010

The videotaped deposition of PAUL MISHKIN was held on Wednesday, June 9, 2010, commencing at 2:00 p.m., at the offices of Howrey, LLP, 525 California Street, Suite 3800, San Francisco, California, before Dawn A. Stark, Certified Shorthand Reporter.

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW Suite 1130E
Washington, DC 20004
(202) 232-0646

A. Uh-huh.
Q. "Excel in life"; right?
A. Right.
Q. "Where I excel in math"; right?
A. Yes.
Q. And then, "The Web's No. 1 Math Practice Site"; right?
A. That's right.
Q. Is it, in fact, true that Quia's IXL Math is the Web's No. 1 math practice site?
A. Well, that's our marketing slogan.
I think it's the best math practice site.
As far as how you define "No. 1," it's -- I would say it's the most complete math practice site.
There are about -- there are over a thousand different math topics or math skills that you can practice in the grade levels we cover, pre-K through 6th grade.
So, I don't know of any site that has more than that.
As far as number of visitors, number of subscribers, I don't know.

law firm, Howrey, and you'll see on there, "Howrey, the No. 1 IP firm -- intellectual property firm -- in the world."

That's according to Chambers or it's according to this or according to about five or six different sources, not that I'm trying to do an advertisement.

So, my question is: Is the "No. 1 math practice site," this is according to Mishkin?

A. Yeah, it's according --

Q. Okay.

A. It's according to me.

Q. Okay.

A. There's no third party --

Q. Okay.

A. -- who gave us that distinction.

Q. Okay. Now, let's look at the third page of Exhibit 7.

This is the one where you have "IXL" and then right underneath it, it says "I," -- capital "I," new word, "e-x-c-e-l," "in math"; right?

A. Yeah, it says that.

Q. Now you're spelling it right out, what "IXL"

STATE OF CALIFORNIA) ss.
CITY AND COUNTY OF SAN FRANCISCO)

I hereby certify that the witness in the foregoing deposition, PAUL MISHKIN, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth, in the within-entitled cause; that said deposition was taken at the time and place herein named; that the deposition is a true record of the witness's testimony as reported by me, a duly Certified Shorthand Reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not interested in the outcome of the said action, nor connected with, nor related to, any of the parties in said action, nor to their respective counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by signature this 10th day of June 2010.

DAWN A. STARK, CSR NO. 7847

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